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Samuel Mohawk

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A NEW PUBLICATION, TO BE ISSUED AS OCCASION MAY REQUIRE, AND TO CONTAIN ALL TRIALS OF INTEREST, OCCURRING IN WESTERN PENNSYLVANIA.

INTERESTING TRIALS.

CASE OF

SAMUEL MOHAWK,

AN INDIAN OF THE

SENECA TRIBE,

CHARGED WITH THE

MURDER

OF

THE WIGTON FAMILY,

IN BUTLER COUNTY, PENNA.

WITH THE CHARGE OF THE COURT,

AS REPORTED FOR THE SPIRIT OF THE AGE.

PITTSBURGH:
FOSTER, M'MILLIN & GAMBLE.
NO, 53, THIRD STREET.
1843.

The next number will be issued in January.

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TRIAL OF SAMUEL MOHAWK,

OF CATTARAUGUS COUNTY, N. Y.,

FOR THE MURDER OF

THE WIGTON FAMILY.

In the Court of Oyer and Terminer of Butler County, Pa., December Sessions, 1843.

Hon. JOHN BREDIN, President; Hon. JAMES BOYARD and Hon. JOHN DUFFY Associates; Council for the Commonwealth: DUNLAP M'GLAUGHLIN, Esq., Prosecuting Attorney, assisted by C. C. SULLIVAN, EE'R MCJUNKIN, and W. STEELE LANE, Esqs. Counsel for the Prisoner, (assigned by the Court,) GEO. W. SMITH, N. P. FETTERMAN, and HARPER MITCHELL, Esqrs.

WEDNESDAY, Dec. 13, 1843.

Court met at half past eight o'clock, A. M. The defendant was indicted separately at September Sessions, for the murder of Mrs. MARGARET WIGTON, (the mother, aged 34;) PENINAH NANCY WIGTON, (aged 7 years;) JOHN WALLACE WIGTON, (aged ten months,) ALMIRA WIGTON, (aged eight years;) AMANDA WIGTON, (aged three years;) and PERRY WIGTON, (aged five years;) on the 1st day of July, 1843.

The prisoner being arraigned, and the indictment read, he plead "not guilty" to the charge of murdering Mrs. WIGTON. The indictments were six in number, one for each person murdered.

AFTERNOON SESSION.

At half past two o'clock the Court met, the room being crowded to excess, when Judge BREDIN, after remarks that the strictest order must be preserved, and that the slightest disorder would be severely punished, directed the inside of the bar to be cleared of all except members of the bar, witnesses, &c. After some delay this was carried into effect, by the Sheriff removing those who remained, and the prisoner was brought into Court. At this stage of the proceedings quite a number of ladies came into Court and were assigned seats within the bar.

The Clerk then proceeded to call a jury.

About two hours were consumed in getting a jury; the panel being exhausted, talesmen were called by the sheriff; the challenges being very numerous, as follows, viz:

	JURORS.	TALESMEN.
Challenges by Prisoner.		
Peremptorily, - - - - - - - -	8	10
For cause, expressing an opinion,	21	35
Challenged by Commonwealth.		
For cause, having conscienscious scruples against convicting in capital cases, - - - - - - - -	2	
Sworn: - - - - - - - - - -	6	6
	37	51

The following jury was sworn:

FROM THE PANEL.	TALESMEN.
John Brandon,	Robert Lemon,
Isaac Boyer,	Samuel Marshall,
Henry Barnhart,	Geo. A. Kirkpatrick,
Robert E. Hays,	John Gilleland,
John Oliver,	Wm. Cunningham,
Robert Hay.	John Dull.

The indictment for the murder of Mrs. WIGTON having been read to the jury, Mr. Prosecuting Attorney M'GLAUGHLIN opened the case, on the part of the Commonwealth, alluding to the solemn duty to be performed by jurors, and the enormity of the crime of which the prisoner was accused; he then gave an outline of the case which the commonwealth expected to make out—the murders committed at Mr. Wigton's, and the subsequent arrest of the prisoner at Mr Kiester's. The prosecution then called

JOHN SILL, *sworn*.—Saw Samuel Mohawk at my own house, on the last night of June; at about eleven o'clock at night he came there (the *Stone House*) in the stage with three others; they all got out; when witness came down they were in the bar-room, except prisoner; the dogs were barking at him. First witness saw of him, was after one o'clock when he heard him hallowing down stairs; in a short time heard him coming up stairs; door of bed-room at head of stairs, which come from lower to upper porch; door shuts very tight—not bolted; door had scarce

flew open till he was at the foot of the bed—he made a bound across the room; a candle was burning in the room and witness could see him; took the leg of a chair to strike him; he said "don't strike me;" wife said so also; struck me he wanted to know about the stage; asked what he wanted; replied "I find him—I find him," three or four times; asked him who he had found? he pointed towards the stable and said "I find him!" "the stage?"—"yes," said he—"the stage!" he then said "you pay me fifty cents!" told him I couldn'at do that; "you pay me two shilling, at any rate!" told him couldn't give him any money; "you bad man—you bad man" said he three or four times; "go down stairs or I'll beat you," said witness, drawing the club to strike him; he turned and went down stairs and straight to the stable; the door was locked—he had about time to ascertain that, and turned round and run up the Franklin road—last witness saw of him.

James Wigton lives West by North of us—in the direction Mohawk went—a short mile and a half distant, Prisoner rapped violently at the door, harder than usual; did not hear him *whoop*.

Next saw him after he was taken, at Mr. Kiester's house, when they were tying him. Saw him as he was about leaving Wigton's, where they had taken him. Didn't say why he wanted the money—supposed for stage fare, didn't see the way-bill.

Cross-examined.—When on my porch he hallooed—couldn't hear what he had said. He evinced no disposition to injure any one. The stage he came in was standing near; it came at eleven; did not see him then; he didn't say whether he had come that way; didn't see him coming down the road a few days before.

He was darker in color then than now, and has gained flesh; he acted as though he was in a rage at my house; when at Kiester's he was on his back, being tied; asked him, as they were starting from Wigton's, whether he knew me—he didn't answer. His appearance was altogether different from what it is now; didn't take notice of his eyes.

Court adjourned at half past five till Thursday morning.

Thursday, Dec. 14, 1843.

At eight o'clock the Court met, and proceeded to the examination of witnesses for the prosecution.

Lemuel Davis, *sworn*.—James Wigton and witness had a piece of corn in partnership; his mare died and he said to come over next morning and he'd have a horse of his father-in-laws, to plough; breakfasted early and went over; the door was shut; knocked twice, no answer; nephew and son along with witness, opened the door, supposing them asleep and went in; other doors open; went almost to second door, not noticing anything; son Elijah said "Lord, father, there lies Peggy dead!" Then stepped pretty close to her, and seen that she was living yet; said to Lije, "Run to Seth Emery's as soon as you can—you and Meckling, and I'll go for the old woman!" Thought Peggy had fallen down stairs and that the children in bed were asleep.

When witness returned with his wife found Emery at the door, hesitating; went in; Peggy was dead; witness went up the stairs; saw other children in bed there, laid hand on oldest in bed; found it and the next dead; didn't go to the little boy, felt so hurt he just went down stairs; said to Seth "there's been murder committed!" "Oh no!" "Yes, two of the children up stairs are dead—and that one behind her is dead." It was, the other was yet living. Sent across the creek for Kennedy's; they hallooed they couldn't come—"some crazy man had come along and knocked down one of the children, and they didn't know whether it would live," Emery said. In a little bit James Wigton came, riding the beast; said hardly proper to let him in; wife seized hold of him and said "James, you mustn't go in, your family are all murdered!" after a while he became reconciled and did not wish to go in.

We soon heard he was in Mr. Kiester's loft; was not first there: when witness arrived they were trying to get him from the loft; he wouldn't come forenenst the window. Mr. Blair went up, was struck with a stone in the face and fell back; he was injured.

One child was laying against her back—the second youngest, three years and a half old, may be.

Did not examine Mrs. Wigton's wounds; in coming down saw a portion of her brains on the stairs. Came there between seven and eight o'clock. The child in the cradle was covered. The two girls, it appeared, had never stirred—lay dead in the same bed. Little boy was lying on his face. Felt so much confused can hardly describe the wounds; the stone, or whatever it might be, was sunk into all their brains.

When taken they told him they would hang him on a white-oak in Kiester's yard; he said not to hang him, but placed his back against a tree, and told them to shoot him. He confessed nothing there. When taken back to Wigton's, he was asked by old Mr. McJunkin whether he had murdered them; said yes. When asked why, he said "white women were saucy."

Mr. Wigton's is a quarter or half a mile from the Franklin Road in Slippery Rock township, Butler county.

Cross examined.—He looked a good deal agitated; the way he was took, any man would be; didn't notice his eye, whether unsettled. Was excited myself.

James Wigton *sworn*.—Left home on that morning, between daylight and sunrise, and left my family all asleep and well, went out of the front door, latched it, went to my father's, perhaps two miles and a half distant, to borrow a horse to plough some corn; got the beast, eat breakfast, and returned home as soon as he could conveniently get off; went within three rods of my own door; several came and met me, was very much alarmed at seeing them; asked what was the matter; they told me my family was all murdered, and I know nothing more after that.

We all had slept up stairs for about two months. Had five children. Wife's name was *Margaret; Almira*, the oldest child, would have been eight years of age on fifth of last month; *Peninah Nancy*, the second, was born on 15th or 22d of February, and would have been seven next February—thinks the 22d; the third was a boy, his name was *Perry*, two years younger—born on 15th or 22d February; the fourth, a girl, *Amanda*, born December 18th—three years; the fifth, a boy, *John Wallace*, born 18th October, a year old last October; his cradle was

kept down stairs; he was in bed with the woman when witness left that.

My house is nearly two miles from *Stone Tavern*. It has a kitchen and room down stairs; three doors to go right through the house; when he left there was no door broken, saw all but kitchen door. After the funeral, saw that the middle door was broken—it was of scant inch pine boards, with a sufficient bolt. Believe the stone was one which had been about the kitchen fire-place weeks before this. Just at foot of stairs the door was broken. Did not bring this stone here. The hair of my family was fair—little darker than white; the hair on this stone is similar.

Mrs. Margaret Davis, *sworn*.—Expects she came to Mrs. Wigton's about nine o'clock. First thing she stepped on in going in was Mrs. W.'s comb; went forward and saw she was dead; put her hand on infant in the cradle, thought she put it there with her bloody hands; thought it and the one behind her were asleep; told husband not to waken them. After finding them dead,—met James and said "your family is murdered;" thought baby alive, and he said, "Fetch me the baby;" Jane went to lift it up and the brains fell out in the cradle.

Seen they had fought sore all over the house, from the blood,—he said himself she was likely to get the better of him; she was a stout woman. We examined her head; pieces of skull as long as her finger, among the hair, which was drawn forward; a pane of glass was broken, and a bloody case knife near; he had cut her two inches long on the cheek, we supposed with the knife. Was up stairs; they laid as if asleep, and when he lifted them to strike, the blood went on the ceiling. The girls lay on right hand, the boy in the trundle bed which was a little drawn out, by himself. Mr. Wigton thought he might be alive and sent us to see. He was laying a little out of bed. All were struck on the head. Nancy was the only one disfigured in the face.

Dr. De Wolf requested her to assist in washing them; Mr. Cross cut the hair from Mrs. Wigton, and we laid her on the door; the wrist and three of her fingers were broken; didn't examine her back where it was cut; her clothes were cut through in several places.

The Indian's coat was laying in the kitchen. When brought there he acknowledged it was his, and said he had lost it or threw it off in the fight. He said "he had put a cloak around him, and you'll find it in the corner of the field!" pointing to Mr. Kiester's field; he gave no reason for putting it on; the reason he gave for the murder was that "white women were so saucy;" he said "he went to kill the baby, and it looked up and laughed, that he had a notion not to kill it but went back to it and killed it."

Joseph Kennedy, *sworn*.—Wigton's is in view of my house, a hundred rod distant, could hear children, dogs, &c., often. Heard a noise that morning, such as when children were at play on other mornings, which I thought it was; saw a person run out towards the barn, where he fell down, but instantly got up and run into the house again. Ten minutes after went out with family, and one said who is you coming up through the oats; he had a big cloak on, and every few rods he would turn and look towards Wigton's with his back towards me; then came towards us till within a rod or two, turned towards the barn a few steps and then came towards us again. His appearance, bareheaded, with a large cloak on him, terrified the young family, and the mother ordered them in; told them not to, as I expected no danger; thought him drunk or crazy. "Where are you going?" "I'm going home!" says he. As he stepped upon the fence from a pile of stone, the cloak opened and I saw the blood on the clothes; he picked up a stone which would weigh about eight pounds, as he stepped down, and threw it at me, when three rails distant; wasn't struck, couldn't get any stone; run after the one he threw; meantime he struck a child two years and half old, which was near, its mother thinking it was in the house. The mother saw him throw, and shouted "murder," the child turned and it struck it sideways on the head. The oldest girl run and picked up the child and took it in. When I came up from the spring run, where the stone had rolled, the dog had caught him by the ancle; he got a long pole to keep the dog off; as soon as I took the dog off him he left the pole; we were at the barn. Heard them halloo to me from the house the child was dead—the first I knew of him throwing at it. Thought it dead, but in ten or fifteen minutes it recovered some, and we had hopes. Sent a boy to Kiester's for him and his gun; he stayed ten minutes and then started home, leaving his wife and daughter with us, fearing he'd attack his house; heard he was at Kiester's and went there—Mohawk was up stairs at that time; some one said there were a pair of pistols, powder, &c., in a chest in the room, which Mohawk might get hold of. Mr. Blair was sent for and came; he said he would get him down; he went to the barn, got a stick, and went up with us after him; but one could go abreast; I was fourth; when three steps from the top he was struck with a stone on the brow and side of the nose, and knocked down, and we thought nearly killed; didn't see the stone afterwards. Nothing further done till fifty or sixty came, when some wanted to shoot him—others said it would be cowardly to shoot him, and he ought to be taken alive. As he had but two stones when he went up stairs, three or four went in the other room, and when he threw the other stone, they rushed on him and made him prisoner.

Mohawk appeared to be almost gone; when he came to, he called for water; he was tied and set up at a white oak tree; one man (think it was McNair) told him to stand up till he would shoot him; he put up his hand and said "time! time! don't! don't!" They asked him whether he would rather be hanged on the tree or shot? he looked up at the tree, and then, pointing to his forehead, said "shoot here! shoot here!" Left for my own house to see my child; he was taken to Wigton's; saw him there in the yard; was examined before the inquest. Heard him say, when the witnesses were under examination, he shook his head and said: "None of these men saw me when I was doing this." Went home again and saw him no more.

He left my place with the cloak on him, but hadn't it on at Kiester's; McJunkin and myself tracked him about, various turnings, towards Kiester's; some days after some of Wigton's friends and myself searched for the cloak through the woods; my boy found it on my land near the fence, just as if a man

had sat on his cloak, against a tree, and got up and left it there. Mr. Wigton got it—had seen it on him before. It was long enough for Wigton—too long for Mohawk. It was wet—he must have swam the creek, which is 15 or 20 feet deep between Wigton's and my house; twenty rod above is a fording, which would have wet him pretty well up to the knees; a road crosses there; can't see Wigton's from the fording, but can from the oat-field where I first saw him.

Cross examined.—Never saw Mohawk before. The cloak was pretty wet. My house is not in a straight line between Wigton's and Kiester's—is near it.

PHILIP KIESTER, *sworn.*—When he got back to his house from Kennedy's saw the Indian coming with a chunk of a stone in each hand; witness was afraid and run, as he thought he was the man who had been at Kennedy's, run to the house, picking up the little axe on the way; he followed, and as witness was at the back, he heard a noise in front, which he thought was him breaking a window; run to the wheatfield and looked back to see if the Indian was following him; he was just coming round the house, making right for the spring house; run on towards where the boys were clearing, and called them; the Indian went back, up stairs in the house. The bedclothes he piled up in the door, and in throwing a stone broke another window. The glass in the lower window was all broken and part of the sash, but not enough to allow him to enter. Can't say whether the door was open or not.

He resisted; witness never went forward—kept back for the younger men. Heard Mohawk say at Wigton's that no one saw him committing the deed,—nothing else. He took a penknife from up stairs on the window, which belonged to witness—it was found on him.

Cross examined.—Mohawk couldn't have seen the boys from the house. Never saw him before.

CHAS. MCQUISTION, *sworn.*—Heard at my house, there was a man up stairs at Kiester's. Went up silently, saw him, with the bed clothes at the door, sitting on his hands and knees; he raised his head, and, thinking he had fire arms, witness went down; after that saw him standing in the room, with a stone in his right hand—a blanket in the other—told him not to throw—he motioned to throw the blanket first and the stone afterwards. Witness showed him Blair's bloody stick, and told him he had hurt a man, to give up; wouldn't do so; his lip was in an attitude of grief; came towards witness to strike him; retreated and got a gun to shoot him; put it down, got a stool to protect himself, and went to the other room; went to his room, he threw a cloth and a stick, which passed me; caught him by both arms above the elbow—his arms fell useless, he made no defence. His back was against the partition, he shut his eyes tight and drew his brows and face up. There was blood running from his face—he was cut on the forehead, near the eye; his shirt sleeve was bloody two-thirds of the way up from the wrist, and torn. He was laid on his back in front of the house; when raised up he opened his eyes for the first time, and said "what do you want now?" When asked "if he had killed them people over in the other house?" he said "he had killed them and they go to God—you kill me and I go to God too!" When asked the reason he said "but I was crazy—I was crazy." He said that "white folks were so saucy he'd kill them!" He said "he had been mad for two weeks, at the white folks—they used him so bad!" When spoken to about being killed he wanted them to "shoot him with three rifle balls, here—here!" pointing to his forehead. He said he had crossed below the ford of the creek. At Wigton's he said he had murdered them and "was sorry—very sorry for it." His coat was laying on a barrel, in the house; the door between it and the room where they lay was burst open. The coat was handed me—he said "give me that coat—that is my coat!" It was a brown frock coat—no blood on it; he pointed where he had left the cloak, said he took it from the house; he was barefooted—his large toes turned inward; tracked him on the creek bank, in the blue soft mud, followed it to where there was eighteen inches water opposite where the fording went out; went up through the fields to the woods where Kennedy's boy found the cloak.

When put against the tree, he spoke of the three rifle balls; didn't hear him questioned.

Cross examined.—The stick he struck at me with was small, and splintered at one end—it couldn't injure any one; he threw a cloth at me. Didn't see him open his eyes from the time he was caught till he was laid on the grass. Made no further resistance, after he was caught; never saw him before; his upper lip trembled; noticed no tremor of his hands—appeared perfectly prostrate.

CHAS. COVENTRY, *sworn.*—When at Kiester's proposed going up for him; M'Quistion and witness went up; heard he had pistols, and got a stick at the wood pile; Mohawk threw and broke a window near me—within three or four yards; rushed in, M'Quistion and another man had him down; witness struck at him, but hit M'Quistion; caught one foot and we dragged him down stairs. He lay a few minutes on the grass, then set up, opened his eyes and said "what do you want with me now?" They asked where he was from and his tribe? he answered them, his name was Samuel Mohawk, of the Seneca tribe. They then put him under the white oak. M'Nair asked him about hanging or shooting, &c., (as detailed previously.) This was at about nine. We loosed his feet and two of us held him, and took him to Wigton's. He told me on the way the act was not committed with a tomahawk, but with "a stone—a big stone." Said he was sorry for it, hung down his head and appeared to be crying. Set him against a tree again; searched him, found M'Kiester's knife; said he had some small change he wanted to send to his wife, but we found none.

Came as far as Hickory Furnace when he was brought to Butler. We fed him, and witness was going to lose his hands—some objected, and Mohawk pointed to a log-chain, saying "tie that round my body and untie my hands so I can eat." afterwards Mr. John Baldwin, a small man had struck or insulted him, and Mohawk said if they'd untie him he'd fight him.

Cross examined.—He eat heartily; hadn't eaten any that day. Never saw him before.

DAVID MCJUNKIN, *sworn.*—Was at Kiester's house when captured. Was making fence when Kiester asked if he had seen a crazy man that morning—that

one had murdered Wigton's family, and nearly killed one of Mr. Kennedy's. Went to Kiester's (witness gave the same account as the previous witnesses, relative to prisoner's declaration, and of the wounds and positions of the murdered.) At Wigton's the tears came in his eyes. At one time he said "not me at all—you can't prove it!" Don't know what he referred to; couldn't understand very well what he said about the cloak. The floor was bloody only round where they lay, as he noticed.

Wm. B. M'Nair, *sworn.*—Was present at the arrest; saw family before he went to Kiester's; with two others entered Wigton's house; they were all dead; went to Kiester's; Mohawk was up stairs; Mr. Blair had been injured, he was in the yard, with his face bleeding; several went up stairs, Benj. Grossman first with a stick; he struck the bannister and called on him to come down; they made a rush and captured him, making considerable noise; went back and saw the window up stairs broken—found a stone up there afterwards, and a dinge in the sash.

After he was captured asked why he killed that family; he said "saucy people—crazy—crazy!" Gave him some water and stood up against the tree, tied hand and foot, and washed his face. On hearing him say "crazy" thought I would scan his countenance, and asked him whether he would be shot or hanged? "Shoot me!—stone, oh, stone!" supposed he meant stone him. Raised the gun, some caught me and prevented me ascertaining the effect on his countenance. He asked for more water and said then we might shoot him. We took him to Wigten's, where he said, after the inquest, "no witness—nobody seen me here!" On the road from Hickory Furnace to Kiester's he *whooped* several times. At Kiester's got a wagon, and wanted him to lie down; told him he might be shot on the way; he then lay down and was unwilling to rise, until near town.

Here the Court adjourned till afternoon.

Thursday Afternoon.

Wm. B. McNair, *continued.*—He was asked if he had a family; said he had a wife and two children; her name was *Suzy Silverheels;* he said he "saw the devil in there!" pointing under the buffalo robe, in the wagon; said he had large yellow eyes; enquired as to his property—he said he had land, and attempted to give its distance from a stream of water, didn't say what one, attempted to give his route down, mentioning Meadville, Erie, &c. Enquired how he got the mark on his brow? he said "fighting"—in Meadville, witness thinks. Saw his coat, at Wigton's, it was a brown surtout coat, somewhat torn—he said it was his. Heard him endeavor to show where he had left the cloak. Saw a stone, covered with blood and hair, up stairs—the stone in court looks like it.

Gen. George Potts, *sworn.*—Was on the inquest; went from Kiester's ahead of the prisoner when McNair presented the gun at Mohawk, and knocked the gun up, saying it was too sudden a death, supposing him in earnest; Mohawk exclaimed "top! top! wait while! water!" Some said "hang him! hang him!" He replied "no hang Indian! no hang Indian!—shoot Indian! shoot Indian!"

Went with Stewart for the Justices; they came; we then got the constable to select a guard, and remainder went to Wigton's.

Was called as one of the inquest, and examined the bodies separately. The jurors then surrounded prisoner and witness questioned him; asked his name. He replied "*Sam.*" "Sam" what? "*Sam Mohawk.*" Enquired of him his age; he said "thirty-five," and that he was of the Seneca tribe. During the examination of some of the witnesses Mohawk said "sheat Indian—sheat Indian!—no witness—Indian not do! Indian not do!" Some persons said "You confessed to it!" and witness remarked "You are too late." At this time some one handed a knife; Mr. Kiester claimed it, and Mohawk said "my knife—got far piece away!"

Mr. Kennedy gave a statement of his conduct at his house, and Mohawk said "dat all true—dat all true!" The cloak was spoken of and some said a new pair of shoes were gone. Some one offered Mohawk a new shirt if he'd tell where the shirt was; he pointed towards Kennedy's and said, crossing his fingers, "in fence-rail—in fence-rail!"

Daniel Krytler, *sworn.*—Was at Kiester's; it was said he had a pistol and a knife; it was suggested to smoke him out; couldn't do it, and some of us ventured up; when he threw we rushed in, McQuistion struck at him, and hit witness; witness struck Indian with a stone, and when down several struck at him with sticks, others hallooed not to murder him. Took him down stairs. Didn't hear what he said about hanging; saw him point to his forehead.

Went to Wigton's. When asked if he had killed the persons, he said, "me did—me sorry for it." (Witness gave the position of the bodies.)

Whilst bringing him along, he sometimes was singing Indian, talking about the "stage;" that there were devils no bigger than his thumb nail, on the chimneys, who told him to "kill all God damn white men!" he then used some Indian words, and said he saw the devil, laying in the wagon. He laid down, for fear some one would shoot him. Mr. Baldwin kicked him; he said if ever he would catch him he'd pay him, and wanted to be loosed. When on the main pike he sat up.

Cross examined.—He rolled his eyes and seemed very mad when he spoke of devils; his eyes sparkled and he looked very mad. Noticed no twitching of his hands.

Charles Prosser, Esq., *sworn.*—Was one of the justices who held the inquest. Mr. McJunkin's statement, as far as witness knows, was correct. Prisoner said Mr. Kennedy's account was true.

William Crow, *sworn.*—Was at Kiester's; saw Blair, and many others, some of whom had guns; the floor and stairs were bloody; some proposed going up, but others said they'd get some brimstone; sent for a dog named "Rice" to send in for him, but the dog wouldn't go. (Witness gave an account of the capture, similar to that of other witnesses.) Mrs. Stewart said if we'd kill him we'd go to the Penitentiary; some thought him dead, and witness turned him over, and they took him down, washed his face, and laid him on the ground. (Witness gave an account of the conversations with Mohawk, at Wigton's, as previously detailed.) Asked about infant—if he killed it? he said "me did," and that he was sorry for it. At one time he said he was getting *cheated* and wanted some one to bail him.

Cross-examined.—Think there was a door to the

room in which Mohawk was, partly open. Was in the wagon with him.

Direct resumed.—Came near hitting Grossman with the stone. On the way down, asked him about Mr. Pott's house to show where he got in the stage in Butler; said he would, and pointed to Beatty's, when we got opposite, and he said "there where me get into the stage."

Rev. Wm. Stewart, *sworn.*—Heard that three of the Wigton family had been murdered; didn't believe it; an express came confirming it, and, with Mr. McNair, Mr. Bryson and others, went to Wigton's, and saw the bodies; one of us picked up the stone, and placed it back, remarking that it was the instrument of murder; expressed my opinion at once that it was the act of a maniac, thought perhaps of one of our own citizens, deprived of his mind. On approaching Mr. Kiester's, saw several with guns, and called to them as he rode up, not to shoot; desired to have him taken alive that we might know how it happened—what led to it; asked who he was? no one could describe him, and at that time no person knew that he was an Indian; approached cautiously as we knew that pistols were there; advised a rush on him; Mr. Blair's injuries deterred others from going up. Found it impossible to smoke him out, and got a large dog, but he wouldn't go up. Advised the young and stout men to go in a body. In about an hour and a half heard the rush; run up stairs, and seeing him down and the men hitting him, called out "boys, don't kill him." When brought down a gun was raised to shoot him; he said "shoot quick—I want to die!" Witness interfered and inquired of him "why did you kill that woman and her innocent little children?" He replied "me crazy—me crazy!" During the inquest and examinations, he would lean forward, look intensely in the eyes of the witness under examination, and at the close of the examination drew back, and said "nobody for poor indian—nobody for poor Indian!"

In prison visited him, with Rev. McGowan, on the Sabbath week after he was committed. Mr. McGowan conversed with him. He appeared penitent, said he deserved death and future punishment. Went with him again in September, when he made similar acknowledgements, and said he expected to die. His appearance in prison was different from that when arrested, he wept profusely.

Cross-examined.—Didn't hear him say that he didn't know what he was doing. He was addressed as a great sinner, under a great crime—of murdering the family of Mr. Wigton. He was calm, collected, thoughtful. On the day of the murder, he was wild and savage, his eyes fierce; noticed no quivering of the muscles—mouth open, in the usual Indian manner.

Jesse Kiester, *sworn.*—On the way down said he had murdered that family, and was sorry for it—that he was crazy. Said he wanted to kill that old man, but he had a gun and he was afraid of him—supposed he meant witness' father. He pointed out where he got in the stage.

Cross-examined.—He spoke of seeing the devil, and pointed under the seat, saying "there he is now!" His eyes were wild, fierce, glistened and sparkled, brighter than they are now.

Dr. Van Horn, *sworn.*—Saw the bodies which were down stairs, (described their position, and that of the wounds.)

Dr. Eli G De Wolf, *affirmed.*—No one being called on to do so, but a slight examination was made of the bodies. (A description of the wounds was here given.) On the left side of the neck was an incision apparently with a dull knife; she had lost a great deal of blood. The wounds would have produced almost instant death. Suppose blood would flow more copiously in case of a struggle. (Witness gave a description of the other wounds, and an account of some of the statements of prisoner.)

Maj. John Little, *jailor, sworn.*—These clothes were worn by prisoner when brought to prison—a coat and shirt.

Here the Commonwealth rested.

Mr. Smith opened the case for defence, congratulating himself upon the selection of the jury from this county. The counsel for the defence labored under great difficulties from the excitement existing, which deterred the prisoner's friends from assisting him, and witnesses from testifying in his favor. He sympathised deeply with Mr. Wigton; he would call no witness to screen the prisoner, except to show that he was insane at the time of the commission of the deed. He would refer to some authorities on this subject, ere he would examine any witnesses in the case. He did not deny a most barbarous and cruel murder of Mr. Wigton's family; had nothing to say against the statements of the witnesses. Insanity, their plea in this case, had been grossly abused, but he warned them to be on their guard against any thing said to induce them to throw it aside altogether. Charity and Religion had both been abused, and yet were they therefore to be considered worthless? It s considered a good defence when made out.

At the time the murder was committed this man was insane, and not responsible for his actions. Punishment was not for vengeance—for the gratification of those injured—but solely for the prevention of crime. The gentleman then went into a description of insanity, as adjudged in the English Courts—the difference between partial and entire insanity, claiming that the former was the condition of this man when he committed the act. He then cited: 4 *Blackstone* 20, 24; 2 *Law Library* 289, (Earl Ferrer's case,) 292 (Hatfield's case;) *Rush on the mind* 386; *Pritchard on insanity*, 268.

The counsel contended that this was a case of insanity, arising from habitual intoxication, relative to which he cited: 1st *Beck's Medical Jurisprudence* 633.

After he had concluded, the Court adjourned for one hour.

Thursday Evening.

Court met and the defence proceeded to examine witnesses.

Col. Jacob Brinker, *sworn.*—Am acquainted with prisoner; on 29th June afternoon, saw him first at my house; he was lying in the yard between my house and Mr. Campbell's on his hands and knees vomiting very severely; he came round in front of the house, and sat down on the bench; he was all trembling, tears running down his cheeks, and nearly suffocated with a hiccough—could hardly get his breath; had a very bad cough—said his throat was very sore; appeared to have the influenza, which was prevalent then; said he was very sick and would

die; told him to sit down on the bench a few minutes, and if he'd come I'd bleed him; bled him; he took off his coat and he shook with chills; he moved his chair from the draft of the door. Witness went for a Doctor; met Dr. Agnew and told him of it; Mr. Boyd said if you'll prescribe I'll get the medicine, and witness promised to take care of him while using it; Dr. said to give him an emetic; declined doing so till Dr. would see him; Dr. Agnew looked at him, and pressed on his neck and breast till the Indian hallooed; he didn't give him the emetic; sent other medicine by Franklin Gilmore—a large "sweating powder;" gave him one, and put him to bed; an hour after he took another—sweat a great deal and appeared a good deal better.

About sundown the Dr. came down to see him; witness gave him some coffee; Mohawk washed his face, hands, and feet, said he'd die that night; asked for a *Presbyterical* preacher, (meaning Presbyterian); promised to get one if he got worse. Shut the doors, and after the family had retired, at about eleven, when reading in the bar-room, heard some one talking up stairs; recognised his voice—he said "what you want? what you come for? go way! come here!" Went up and found him standing about three feet outside of the room door, leaning forward, pointing toward a window at the head of the stairs. "Sam what's the matter!" said witness. "Did you see that fellow?" "What fellow?" "A man come in the room to my bed side and talk all the time—he say 'Sam, you bad man! Sam, you lie! Sam, you steal! Sam, you get drunk!"—he talk to me all the time!" Told him there was no one up there—that he only thought so He insisted he had seen him. Told him his head was not right—you're wrong here, (putting my hand on his forehead) your head is wrong. Took the candle and showed him there was no one in the other two rooms up stairs. He stood a foot or two back from the door, leaned forward and looked in—wouldn't go in. Told him to go to bed. He said "you go where you come from." Went down stairs about fifteen minutes, then went up, and he was still standing at the door. "Sam, has that fellow come back again?" He said "no—he not come this time!" He went to bed and witness locked the door on him. Went up early and asked him how he was? "Me great deal better—me very glad —me go home now to Cataraugus, to see wife and children." He told me he had two children—that he was 34, and his wife 18 years of age. One child "two three weeks old—one ten years old." On inquiring he said "me had 'nother wife!" Asked him where he was going? He was going to Pittsburgh to pull boards out of the river, money was scarce at home; he would go home now—"me not come to your house last night me dead this morning."

He went down stairs; told him to stay to eat, and if not well enough to go, to remain until better; he didn't eat; he went up to town and was away about two hours; come up running; said "come again—medicine;" had hiccoughs, gave him twenty drops of ether; he said it "make me feel like rum;" he sat down and felt his pulse; said "too fast, too fast—it will beat again!" Looked wild, cheeks red, and feverish: wouldn't bleed him till the doctor would come; he said "no! you bleed—you doctor enough!" Sent for Dr. Gettys, Dr. Agnew being away; Dr. Wilson came, advised bleeding; witness bled him, and he appeared afraid—averting his face; he then appeared sick; told him to go to the bed above the bar-room and lay down and he'd feel better; went with him—he laid down and witness returned to the bar-room; in about an hour heard him come down very softly; he opened the door about three inches, looked all around about three minutes, gave a sudden spring and jumped into the entry of the other building, run to his former bed room and shut the door close; followed and found he was holding the door; looked and saw through the keyhole the sleeve of his coat trembling—"Sam, open the door!" no answer: repeated it louder, he said "No! Indian there!" told him no, he peeped out, and seeing me alone, came out; asked why he run? He said "when me Indian come there to kill me! Me see him—me sign paper to sell land at Cataraugus—some Indian friends, some Indian bad—some white man friend, some white man bad!" Came down in front of the house, and round into the cross street.

In half an hour came back, excited, asked "where Squire?" Asked him why he wanted him? He replied "that man over this house strike me here—me know law—me sue him—put him in jail!" Told him he thought he must be mistaken; in a few minutes he started; called him back, but he went up towards the Diamond.

He was away half an hour, came back as before; got him to lay down, above the bar, again; in fifteen or twenty minutes heard him talking; went up; he said "people down there say me give you money—me got no money—you take this!" handing witness a five cent piece, which he returned him; Mohawk then said "You no take money! you not make me go way!" No, said witness, I'll not turn you off.

In half an hour he run down into the street hallooing "where he go?—where he go!" Asked him who? "Four men ride—four men walk—some Indian, some white men—Dr. Johnson along—he call me—he call Sam!" Told him no one went along—he said "yes, me hear him!" He looked up the Pittsburgh Turnpike, walked to the corner and looked down the cross street, came to the door, walked along the road, back and forth, with his head down, said "me want to see track—me want to see moccasin track!" He asked for buttermilk, and got some and eat some dry bread; got him up again, but in half an hour run down again with a staff he had found there; run into the yard hallooing "where he go! where he go!" who? "Indians;" he looked round the stable and then into the street and came back to the pump, took a tin cup from a child, got a drink and handed it back; his hands were folded; a pigeon flew from the house and he jumped up about two feet.

He then came in front and we set down together on the bench; tho't he was taking some bad fever, from his appearance; his neck veins throbbing so as to make the collar tremble; asked if witness would send him to Erie by stage, he could walk home from there? "Me very glad you get me in stage! go home to wife and children—see Cataraugus again!" Told him I'd do so, if the stage was not too full. Went to supper, and he came running into the dining room. He said "Stage come—you promise—me go!" Told him if not full he should—he eat supper, and witness went to Mr Beatty's till the stage arrived. Mr. Beat-

ty said he had no share in the line, but would send him free to Mercer, where one of the owners (Mr. Stuart) lived—he could send him or not as he chose. Four passengers there, one of whom was acquainted with the tribe, and would take care of him. Went towards home and met him; beckoned him, he run, told him not to, he'd get the hiccoughs; he said "me very glad—Mr. Brinker pay my stage fare—me go to Cataraugus see wife and children again!" The passenger enquired of him about the tribe;—did he know Dr. Johnson? "yes," is he a good man? "no! he bad man!" Another person was named. "Don't know!" Is *Silverheels?* "yes, he good man!" He eat and got in without speaking to Sam. Witness told Sam the stage was ready—he run out and got in.

Saw him at the jail door next evening when he was brought in; said "Sam, what's this you've done?" he said "what's to be done now?" They took him in. On next day, Sunday, he sent for witness; went there. He had the same appearance as when he went away—a wild look. All went out but one or two, and witness asked "did that man come to jail that went to kill you at my house?" "No," he replied in a whisper, "uncle come this morning—brought his gun—wan't to shoot me," pointed to no one; looked round suspiciously; on enquiring he said he was left in this way—he got out and walked up the road—men came after him hallooing "Kill! Kill"—he run all night and they run after, still saying Kill, "me thought me *kill* too!"

A week or two after called to glance a healing on his leg; saw his appearance was different—looked as he does now. Asked if he was disturbed any more by those persons who wanted to kill him? he said "no—after me here two or three night me never see them no more!" Visited him afterwards with different lumbermen who thought they would know him; he talked with them—said he didn't know them; had the same rational appearance. He got no liquor at witness' house. First time he came back, suspected some one had given him liquor, and was angry, but he did not smell of it.

He had (at my house, except the one morning) a wild, restless, appearance—trembling; when hiccoughing trembled more. After he said he had been struck, his appearance was worse; don't believe he slept any, except first night; said he slept "not much," and that he took the bed posts for Indians. He came on Thursday noon and remained till Friday evening, during which he eat the bread and buttermilk, and supper before he went. He was seldom still a minute. Sent him to Dr. Agnew's for medicine—he got none. Took about a pint of blood from him each time. His system was prostrate apparently—had a sore throat and bad cough; never laid more than an hour at once, except first night. Had same appearance when he went away.

Cross examined.—Attended to ordinary business during this time; feared to leave him alone after hearing him the first night. Have not been active in this case; have mentioned these things and told them often—was told not to tell it—it was unpopular. It was reported he had applied to get the Indian pardoned—that he had four hundred Indians upon the Pine, provisioning them,—that he was going to bring the whole tribe and burn the town, &c., &c. Was not stirred up by these reports to endeavor to make him insane. Asked him the questions to ascertain whether he was in the same state of mind, and did not ask about the murder till the second visit. Sam asked me to write to his wife and chief; promised to, but did'nt intend it. Heard he had taken salts the first day. He was no better when he left in the stage—as usual. Got nothing from him about the murder the first visit—nothing but what has been stated. Asked him on the second visit about the murder. Enquired why he killed the woman and her five innocent children? He replied, "me don't know—guess me crazy!" Asked him more particularly how it happened? He said, "me don't know—me thought *kill* all time."

HARPUR MITCHELL, Esq., *sworn.*—First saw him on Thursday before 4th of July; some one told me there was a sick Indian in town; saw him on the bench; Dr. Agnew looked at him; went to Boyd's and got the medicine changed for two powders; they took him up stairs—didn't see him till going to bed—looked in his room opposite mine, and asked how he was; heard him talking afterwards; the Colonel came up, after he went down, witness bolted the door. Saw him in the Diamond next day; asked him what was the matter? he said there was somebody after him; told him there wasn't and went to Dr. Agnew's with him; the Doctor was not at home, and witness told Sam to go back.

Saw no more of him till supper, when he run in with a stick in his hand, saying the stage was come. Witness went up stairs. Paid little attention to him. Saw him on Friday afternoon running into the yard, saying some one was after him; the pigeon frightened him then, it was on the porch. Heard Sam ask "who was there" the first night, in a loud tone, can't remember what else he said,—felt a little afraid of the fellow.

Cross examined.—Was lying on the porch, near the middle, with my wife; Sam was near the centre of the yard; we laughed at Sam jumping, when the pigeon flew, and witness said something to him. Didn't question Sam about his relations or residence.

Mrs. LOUISA MITCHELL, *sworn.*—First saw him when father (Col. Brinker,) was bleeding him in the bar room; Jane held the bowl; he hiccoughed different from any other she had heard; her father told her to prepare a bed for him, as he was very ill; father helped him up, and witness got him some coffee; he drank it, thanked her, and said he thought he was going to die; wanted to send a letter to his wife—Susan; said he had two children.

Father said to prepare a bed in another and cooler part of the house, and Sam went there—in the morning. In an hour father said for witness to give him another powder; his face was flushed, lips parched, as if in a high fever—his mouth twitched; his eyes were wild and fierce, could scarcely look at them; asked if he could see, said not very well; gave the powder in the afternoon; went up again, he was in a perspiration—asked if he was better? he burst out laughing and said he was, and was so glad; told me, very suddenly, when getting worse, that "before Sunday he would go to hell;" then run to the door; he had a mustard poultice on his stomach and throat; he spoke of a preacher, Mr. Bliss; said (if witness didn't write to Sam's wife) to write to him—his wife

belonged to his church; said if he got well he would never use any strong drink.

Next saw him at the pump, when he got frightened at the pigeon; he run out, "where he go!' he said; who? "Indians." He stooped down, as if looking for something—the pigeon flew—he jumped and witness burst out laughing; thought he looked wilder before he left; he was the first to see the stage, and then run into the house; he told me father had promised to send him in the stage; that was the last she saw of him.

Heard him say "where they go—who you see—what you want?" repeatedly, first night; was all she heard; her husband told her it was an Indian, and he thought he was crazy,—he was in the entry; heard her father come up about ten or eleven; heard him twice afterwards.

Cross-examined.—That was the night of the day she gave him powders, she thinks; have seen others in a similar situation—feverish and parched lips. He assisted in putting on the mustard, asked if the Dr. ordered it, and said it burnt him; it was a large strong plaster; he spoke rationally about his family; did not always answer her promptly and readily; gave him ether one afternoon; he pointed to his head and said it was like "strong drink;" spoke fast and broken; don't look now at all like he did; would not have known him; he was haggard and wild looking then; he always answered her sensibly; when he was watching, some one said an Indian couldn't see as far as a white—another said he could see farther; just then he saw the stage and sprang in the house; looked staggering—supposed he was kept up by the excitement; didn't think him well enough to travel; he said he thought he could go home.

Abraham Moser, *sworn.*—First saw prisoner at the time Col. Brinker was bleeding him, when Dr. Wilson was there; saw him two hours afterwards, setting in front of the house, and conversed with him; thought him very sick—his pulse very fast; he said he felt sick; his eyes were sharp, wild-like—couldn't say whether sparkling; he was trembling, saw him in the bar room next; the Col. was sitting with him, and advised him to go up stairs and lay down, and they went up; Col. B. came down; after some time Sam made a noise and he went up again, and asked what was the matter? he said that "Indian and white man after me—say me bad man!" he came in front of the house; witness sat beside him; Sam asked if he was married; told him "yes;" asked where he lived; told him "down street," and asked if he would go along with me; said he would—we went down, without talking; wife was absent; handed him a chair; he took the hiccoughs and asked for a drink of water; told him to sit a minute and witness would get some, in returning in about ten minutes, saw him going towards Brinker's; called him; he turned and said he was going for more "medicine—me sick!"

I saw him again in the evening, and he appeared more stupid, not so nervous; didn't sit still,—moving hands and feet; had no conversation then. Saw him next in prison. He appeared to look around very suspiciously when at Brinker's.

Cross examined.—He sat still except moving his hands and feet. Did not notice his eyes particularly. Thought he had the *mania potu* from drink. He answered intelligibly, and manifested no disposition to injure any one—didn't see him angry. Said nothing to me about leaving; said he was Sam Mohawk, from Cataraugus and had a wife and two children. He was sitting before the door when he spoke of the Indians calling him "bad man;" he said it coming down stairs, to Col. Brinker.

Direct resumed.—Have spent several nights with a person afflicted with *mania potu.*

David Walker, Esq., *sworn.*—Saw Sam the day he left; met him on Beatty's pavement; he was reeling along the pavement; remarked there goes a "drunken Indian," to some one; Col. Brinker was behind him and said he was not drunk; his lips were moving—muttering; he had a very ill countenance; his eyes appeared dull; he kept his brows down.

Cross examined.—Looked a good deal as he does now; walked rather awkwardly; have seen a great many drunken Indians.

Dr. Samuel Agnew, *sworn*—First saw Samuel on a Thursday afternoon; Mr. Brinker requested me to see him, as I was at Boyd's corner; cannot describe him minutely; was under the impression he had been drinking; asked him if he hadn't been very drunk and he said he had; didn't say when; from the examination he made supposed he was laboring under a slight pneumonic affection, arising from intemperance and exposure. Can't recollect about his throat. Have but an indistinct recollection—considered it a transient case. His nervous system was deranged, an appearance of prostration—lassitude. Did not conceive him to be laboring under *mania potu.* Called to see him in the evening, he was better; early next morning he said he felt well—appeared more animated. The symptoms of *delirium tremens* are numerous, such as a disagreeable restlessness, great anxiety of countenance, delusive fancies, sometimes suppose they see the devil, enemies to destroy or injure them, or ferocious beasts. It is caused by excessive drinking or use of other stimulus, and arises after a withdrawal from it—the time varies, sometimes one day, in other cases the second or third day after quitting its use. They never sleep—a prominent and unvarying symptom. Eye generally not ferocious—it is restless, anxious, looking around, fearful; there are exceptions to this, as when a provocation is given; then exhibit more ferocity, the eye corresponding. When laboring under an illusion of an attack they would endeavor to avoid it—to hide themselves; if they supposed themselves actually attacked they would resist, but are generally easily conquered by decision.

Such persons have occasionally lucid intervals, but not as a general fact. Heard part of the testimony. Would have no hesitation, from the description, in saying he was laboring under *mania potu.* My visits were very short. They very generally answer common questions rationally, when not referring to their illusions. In *delirium tremens* the illusion is unquestionably as great as in permanent insanity.

The disease usually terminates in three or four days, but not always. Made no very special examination of Mohawk—sufficient to prescribe. In *delirium tremens* the pulse is generally short, perspiration over the body; there is not generally a suffused cheek, except perhaps in plethoric habit; tremor of the hand is not invariably present, but it is one of the

symptoms, with concomitant symptoms it is an indication of the disease.

By the Court.—Saw nothing to make me think him laboring under the disease, except an incoherence in his speech, in the evening.

Cross examined.—Can't recollect whether influenza was then prevalent; his symptoms in some degree resembled influenza—never observed it produce insanity. It prevailed last summer, had fifteen or twenty cases; partial derangement is not a symptom of that disease; *delirium tremens* and *mania potu* are the same disease—precisely. Have attended some cases of the kind. They sometimes exhibit malignant feelings—not often.

Direct resumed—*Mania potu* might have existed without noticing it during my short visits to him.

George B. Curry, *sworn.*—Saw an Indian near the hayscales on the day before the murder, pointing towards Mr. Gilmore's house—he turned short round and walked off; considered him drunk; he looked very wild. Can't swear it was Mohawk.

At ten o'clock the Court adjourned.

Friday, Dec. 15, 1843.

Court met at half past eight o'clock, and the defence called—

Stephen Roland, *sworn.*—First saw the prisoner on the Tuesday evening of the week of the murder, in Venango county, near Kerr's tavern, laying under the fence, by the road side, apparently drunk and wet by the rain, got out of my wagon and went to him, called him "Billy Dowdy," an Indian whom he knew; he got up and witness saw it was a different Indian; saw him next morning, in my bar-room, 2 miles from Harrisville, Franklin road, afterwards; he asked for liquor; didn't keep any; he went towards Harrisville.

Cross examined.—Told him it was fifty miles to Pittsburgh, but he had the wrong end of the road; had no other conversation; thought there was something wrong about him; he understood me and answered sensibly; don't know whether Kerr kept liquor then—he used to.

Wm. Russell, *sworn.*—First saw Sam on Wednesday before the murder, coming in Harrisville; he asked me how far to the river; some one told him 45 or 50 miles, and he wouldn't get there that way. Didn't pay particular attention to him; don't know whether he stopped in Harrisville.

Enoch Burnam, *sworn.*—First saw Sam between Graham's and Frazier's, standing in the street; he came toward me, turned right short, and started up street; saw him next at Brinker's, coming from the commons, to Brinker's, (on the 30th June—morning,) with a stick in his hand; saw him again at Brinker's; he came running in, asked Mr. Gross and witness if they had seen an Indian, said not; said two were after him; he went out. In the afternoon saw him run up stairs, run down again immediately and said they were after him again. In the evening he was before the door talking with Gross, who asked him about the tribe, and he was telling of his wife, &c.

He looked frightened about the Indians; was at work and paid little attention to him; when he came down he stopped, asked the question, and went out.

Cross examined.—He said "Indian coming;" he was looking all around. Never conversed with Mr. Wigton about it—don't know him. Sam answered intelligibly about his wife, &c., but in a broken manner; discovered no disposition in him to injure any one—he appeared afraid rather. Didn't see him go away. He said he had two wives (one dead) and two children—didn't hear their ages.

Mrs. Charlotte Thomas, *sworn.*—First saw prisoner the week of the murder, at Mr. Brinker's, leaning against the step; he said three men were calling him,—and wanted to take him away on three horses—thought him possessed of the devil, or something. All she knows. It was in the forenoon—Mr. Brinker was present.

Cross examined.—He looked at me very vicious; he wasn't speaking to Col. Brinker; was near him; he looked grim and savage.

Jacob Mechling, Jr., *sworn.*—First saw the prisoner on the forenoon of the day before the murder; he was at Mr. Cunningham's store door, where several were talking to him; witness was there three to five minutes—thought him drunk or crazy; he had a wild look, was constantly moving—pointing and saying "Indian! Indian!" Saw him going to Beatty's with Col. Brinker, dancing along, saying "Indian go home—see wife, children—get stage-ride!" &c. like a child.

Cross examined.—Was within twelve to twenty feet of him, last time—had the same opinion of him then as before; hadn't seen him walk before that; Brinker was walking fast—Sam was between a walk and a trot, five or six feet from Brinker; thought him rejoicing at the idea of a ride; didn't think he was talking to Brinker; didn't hear him spoken to, at that time.

Jedediah Jack, Esq., *sworn.*—First saw him at the prison; was in on Sunday—next day, with others, perhaps three or four; some one spoke in an unfeeling revengeful style; he looked surly and not disposed to speak; witness remonstrated with them, and Sam then appeared willing to answer any of my questions. Enquired if he had committed the act? he said he had. Why? because he was either mad or crazy—he used one of these words. Had he seen them before? he said he had not. Had they treated him badly? he said they had not. Had he asked them for victuals? he said he had not. Which he killed first? the woman. Had she resisted or cried out? she had not cried out but resisted—that he had a knife, but it was useless or not a good one; that he then went up stairs. Why? "to kill more people," and that he killed all there. What object had he? didn't know—he couldn't tell; he then said there were a great many devils—he saw them—some small and some large; he described the clothing they wore;—he pointed to some check there and said they wore that, some wore black. Said he saw some in prison, witness thinks. He said the devils told him to kill the people. Some one said they supposed he didn't like white people well; he said he did like them. Would he have killed Indians that day? "yes! kill all day—kill every thing!" On enquiry, said he didn't wish to see his family—in a minute or two he said he would—again, he didn't care whether he did; the people of this place would do what they pleased with him—"hang me—kill me—do what please with me!" Expressed sorrow for the act.

Cross examined.—Part of the time about twenty present; Mrs. Major Mechling was in. His language was broken. His meaning in substance was that the numerous devils prompted him to commit the act. He said it was early in the morning—didn't say it was dark; that the children were in bed—didn't say they were covered. He spoke of a struggle, contest, or fight with the woman—didn't give the time it occupied; heard nothing said of the infant particularly. He answered me promptly—and made me suppose him sane, but went away doubtful, as he looked wild and very sick. The man said he ought to be hanged or shot, when witness said he was more an object of pity than insult.

Mrs. Jane Mechling, *sworn.*—First saw the prisoner on the street; afterwards (on Sunday) in prison; Mrs. ——— was there; Mr. Jack, and others; heard part of Mr. Jack's testimony—it was correct; witness said he ought to be beat—he put his hand to his breast and said "shoot me—shoot me!" He was restless—his eyes wandering—and he was pointing to the devils; thought he meant the devils were at the time they were taking him, as he spoke of that just before.

Cross examined.—Thought he said there were many devils around endeavoring to take him; like as not some said he ought to have been shot when first taken; said some devils had guns, and striped coats—whether he meant the people who took him or not; understood him to mean that there were devils around the house, told him to kill all before him; didn't speak of seeing devils when he was killing; didn't hear him speak of going up stairs—the woman screaming, &c.; thought he knew what he was talking about.

John Sill, *recalled.*—Sam got no liquor at his house on the last night of June.

Dr. Eli G. De Wolf, *recalled.*—The symptoms of *delirium tremens* are as given by Dr. Agnew, an older practitioner than myself. From Col. Brinker's testimony, his daughters and others, suppose the prisoner had *mania potu;* "Eberle's practice" is approved of generally.

Cross examined.—The disease may dispose them to fly, but they will return and attack; have attended cases of the disease.

Direct.—Heard the description of prisoner's capture and conduct on the road as testified; from it would judge he had symptoms of *mania potu;* never knew of the disease being feigned—never read of it.

Dr. Van Horn, *recalled.*—Heard nearly all the testimony as to Sam's conduct; my opinion coincided with that of the two elder physicians—that he was laboring under that kind of insanity; never heard of its being feigned.

Cross examined —The evidence establishes symptoms of insanity produced by intemperance; the devils are mentioned by almost every author he had read; also restlessness, anxiety, wakefulness; vomiting is given as one by Eberle, a standard author; not conclusive nor invariable—not if accounted for otherwise.

By the Court.—Could not ascertain the presence of the disease from a short examination, unless from conversing with the person.

Dr. Howard, *sworn.*—Heard testimony in this case, would suppose, without any doubt, it was *mania potu;* never heard of it being feigned; would suppose it could not be.

Cross examined.—Would be able to discover symptoms, in almost every action or word—but sometimes they will speak sensibly, and have sometimes lucid intervals. Would not have difficulty in ascertaining the presence of the disease, by a short examination, if at the time of the fit.

Dr. Agnew, *recalled.*—Never knew or read of the disease feigned—would think it extremely difficult to do so. Eberle's Practice and Beck's Medical Jurisprudence are standard works.

Cross examined.—Could form a more certain opinion by inspection than by hearing.

Here the Defence rested; Prosecution called—

Wm. Hart, *sworn.*—Jacob Brinker told me Mohawk was insane when at his house; showed me a letter he said he had got from a missionary in reply to his about him. He said he didn't appear to be in his right mind when he went away. Said he had written and got an answer.

Cross examined.—Didn't say how long after he was in prison he wrote; he might have said he didn't intend writing, but took pity on him and did.

Rev. Gotlieb Bosler, *sworn.*—Prisoner told me in prison, he had committed the act; said he did not know why he did it—"me no want money—me no want anything! me kill! me kill!" He made, in substance, these remarks. never asked for a particular detail—didn't visit him for that purpose.

Cross examined.—He once said in reply to a question, five weeks after, his head was "all right"—he said first morning after his arrest (he told me) he heard something in the corner.

Direct.—First visit two or three weeks after the murder.

Maj. John Little, jailor, *recalled.*—(Objected to as he was present during the visits of counsel—insisted on being so. Court sustained this objection, as far as it concerned privileged communications.) Sam asked, next morning after the murder, if he'd be tried that day? told him no. If they'd hang him or shoot him? no, not while under my charge; "me glad of that—you one good man!" Told him he'd be tried in two moons and a half; he said that was too long a time; witness then left him, and brought in his breakfast, and he asked if he could not be tried sooner? No. Why did he kill those people? witness asked; "me guess me crazy mad—white people bad people—too saucy." Went in at nine or ten o'clock, and forbid him being questioned—that morning he appeared a good deal through other. Put no questions to him; in the course of the week he said he killed the woman first—"she made a hard fight, a good fight—me kill three down stairs, three up stairs!" Whilst in prison, have observed no symptoms of insanity after Monday evening—till that time he appeared a good deal excited.

Cross examined.—He was a good deal agitated and restless; always said he was "crazy—mad" when he did it.

Dr. James Graham, *sworn.*—Mohawk came to me on Friday for medicine, which I refused unless he'd get a place to stop and take it; didn't see him after. He appeared rational, said he had the influenza; never knew it cause insanity; he was of sound

mind when with me, as far as I had an opportunity of judging—appeared as if he had been drinking.

Cross examined.—Was not long enough with me to notice much; was several minutes there; I was in a hurry; he wanted to be bled. One laboring under *mania potu* might be rational that length of time.

Gen. George Potts, *recalled.*—Observed no symptoms of insanity in Sam, he answered every question reasonably. When sick some one asked him whether he knew such a person; he put his hand to the scar on his head and exclaimed "he dead—he dead!"

Rev. William Stewart, *recalled.*—My opportunity was perhaps not very favorable for observing; answered very satisfactorily; was struck by his manner before the inquest, as stated yesterday in my evidence—nodding assent or dissent to the statements of the witnesses. He was apparently insensible when dragged down. When water was mentioned, he opened his eyes and said "yes, water." The visit mentioned yesterday, was on the Sabbath evening after the murder. Mr. McGowan is now in Virginia.

Cross examined.—When captured appeared very restless—rolled his eyes round, wildly, in every direction; his appearance in the wagon was restless, looking around in the woods, when sitting in the wagon.

William McJunkin, *sworn*—Saw prisoner the evening or two before the murder, down by my house, and conversed with him; he inquired the road to Butler, about the weather, &c. He was there about fifteen minutes; saw nothing more than common about the Indians; said he was going to Butler, told him it was five miles, he said he came from Mercer that day and was tired; the sun was about half an hour high.

Cross examined.—He acted droll, making motions; don't know as there was great restlessness; always motioning with his hands; his face was dirty—he looked round more than he does now.

David McJunkin, *recalled.*—During interviews with Sam, can't say I saw symptoms of insanity; after getting the water, he answered our questions; said his father and mother were of different tribes.

Cross examined.—Don't know as he was restless, more than listening intently to the witnesses. He looked as he does now pretty much. Witness pitied him, and thought he was killed. He said at Wigton's he was "crazy." Can't say that he was of sound mind—nor that he was crazy.

Charles McQuistion, *recalled.*—Heard him say nothing out of the way; he wouldn't look at those who spoke roughly; told him he wouldn't be killed, or not for some time; he said "that right way." From none of his answers did I discover any thing like derangement of mind.

Cross examined.—Is a brother of Mrs. Wigton.

George Kriesly, *sworn.*—After his arrest heard prisoner call for water, and open his eyes, on hearing water mentioned. During the inquest he said he had killed them and that he was crazy. Discovered no symptoms of derangement—but don't pretend to be a competent judge.

Robert McCandless, Sr., *sworn.*—Saw prisoner at McCandless' before the murder, and conversed with him; he wanted a drink of buttermilk, and was given one. He said he was a Mohawk—asked if he saw any other Indians? Said no—were more coming? He said there were more going to Pittsburgh. He enquired the distance to Butler, (which was seven miles) it was about two o'clock of the afternoon. He behaved quietly and was thankful for the drink; thought he was a mulatto at first, till Mrs. McCandless said he was an Indian.

Cross examined —My eyesight is good in day time; not in the evening; my hearing is good.

Wm. Timblin, Esq., *sworn.*—Saw prisoner on Thursday before the murder, in front of Dr. Gettys'; Sam was coming from Mr. Collingwood's Store to the Doctor's; he looked sick; as if he'd been on a spree; his eyes looked drawn up; he passed on up and witness saw no more of him; on Friday evening saw him come with Brinker to the stage office; said to him "well, the Indian didn't die!" "Oh no! me smart—quite smart now! me go home to see my wife now!" he replied, and followed Mr. Brinker at a rapid rate.

Saw him brought to prison again on Tuesday; went in prison with Mr. Little, who told Sam "here was a lawyer." (Objected to and objection overruled.) Mr. Little warned me not to question him about the murder; asked him other questions and he replied to them that he was about six feet high, had a wife and children, thirty-odd acres of land, and his wife had a yoke of oxen.

Here the jailor went out, and witness asked him what he had been doing that he was put in jail? "Guess me kill white people; guess me crazy; me a bad Indian; me drunk" he said, fifteen or twenty days up to within three or four days of the murder. He said Mr. Brinker had given him no liquor, he supposed they would kill him for the act he had committed; was not much afraid to die; that they had put him up at a tree and he had told them to shoot him, pointing to his head. Asked if the woman had wounded him? he said no, that they had struck him and used him very rough when taking him; he said she "did fight," but hadn't wounded him. He said he had killed all down stairs, looked all around for more, and then went up stairs and killed all who were there; "me bad Indian; me sorry for it." Several persons came in, and witness told him there were some boys he might kill; they were a great trouble; he shook his head and said "oh no, me not want to kill any more."

He answered intelligibly, appeared in trouble, and sighed, when he said he was a bad Indian.

Cross examined.—In following Mr. Brinker, didn't ob erve him stagger, except turning when witness spoke—was walking fast, didn't look after him. Was not subpœnaed. Mr. Wigton called on me, and I refused to tell him; he wanted to know if his wife resisted, and he would not call me if I told him.

George McCandless, *sworn.*—Went in the stage with prisoner from Sippy's to my own house. At Sippy's Sam got a drink of water. came out and asked how far it was to the *Stone Tavern*. Told him. He said he was going to Mercer. Was on the boot, and could hear him talk when going slowly. Got to my house past ten. At Sippy's discovered nothing wrong in his manner—thought him an intelligent, smart Indian; he didn't complain of sickness.

Saw him in town with Col. Brinker. Saw nothing extraordinary in his walk—it was smart.

Cross examined.—Conversed with him while the driver was watering—about ten minutes. That was about all our conversation—told him the roads were bad, rough riding, &c.

Wm. Greer, *sworn.*—Mohawk was at my house on Thursday morning early, before breakfast, he asked for coffee and got it; he said "white folks were saucy along the road, and wouldn't give him any." He felt better and got more, and a needle and thread to sew his pantaloons, the left knee; I said he was a tailor: "yes, me tailor, too." Said he was going to Pittsburgh, not rafting—money was scarce at home and he was going to work for it. He asked the price of grain; told him wheat was fifty cents; he said it was a dollar with them. Told him the distance to Pittsburgh, 33 miles, and he said he could get there that day; asked for and got some onions, thanked us for them, and started.

He was there something like two hours; he was warming himself, leaving his muddy shoes on the porch; it had rained and was cool; he seemed as if he had lain out in the wet. He seemed like any other Indian. Live two miles from town.

John Neel, Esq., *sworn.*—Was at the tying of the Indian; my opportunities for knowing the Indian character are my having worked several summers handy to three tribes, on New York Canal, and worked with them; they use signs to express half their ideas. Some said "let us kill the Indian." Baldwin kicked him and Sam said "I mind you for dat!" He was tied down "too tight," he said, and we slacked the cords; discovered no signs of insanity; he would look cross or pleased, according to what was said.

John Hammond, *sworn.*—At Kiester's, after he was tied, asked Sam if he knew what he had done—why he did it? "White folks was d——d saucy! me kill em all!" He was set against the tree then; witness told them they needn't talk about shooting—he would think it an honor, to tell him they'd hang him. Mr. Bryson said "we'll not shoot you—we'll hang you!" He looked at the tree, said "where? here? no—no hang Indian!" and, putting his tied hands to his forehead, added "here—shoot him!" he then said "white folks cowards—darsen't shoot! darsen't shoot." (The witness gave a similar account of prisoner's other statements.)

Mrs. Wigton's brother endeavored to get to him, before he came there; Sam appeared afraid, and would get in the crowd, still looking at him. When sitting on the chair, near the woman's body, he was asked if he had murdered them; said he had; why? "me sorry—me sorry!" and began weeping. (Witness described the position of the bodies, wounds, &c.) The trundle bed was pulled out some: there were tracks of blood on the floor and a stone. (He gave an account of Sam's conduct before the inquest.) He said "me no kill them folks—nobody see me! somebody bail me!" said he had property and plenty of money at home; he claimed the coat found in the house—"my coat!" said he; he said he left the cloak in the oats-field, and pointed to it. Again he said the reason was—"me kill em all she folks." Told him he'd remember all these people around! "Yes, me know em all great while by-and-bye!" He showed some inclination in going, to proceed towards Franklin; they jerked the rope, and he said "untie me I kick you to hell!"

Have been three years among the Indians of the Chippewa, Winnebago and Saginaw tribes, 17 or 18 years ago, and had an opportunity of learning their manners; understood the Chippewa language; saw nothing indicative of insanity, more than the common run when agitated, when they are more savage like.

Cross examined.—Not acquainted with the Senecas and Mohawks; know no difference between Indians except their language; there were missionaries among those I was with.

Dunlap McGlaughlin, Esq., *sworn.*—Prisoner said in prison on Sunday after the murder, that he didn't know how he came to commit it, that he had been down to Pittsburgh, and seven Indians pursued and wanted to kill him; some one said that was no justification; don't remember his reply. At another visit, three or four weeks afterwards, asked where the woman was when he came in? Don't distinctly recollect his answer; said she resisted and they fought through the room a good while; "she said not much," that he could not understand her; cannot remember what he said about the family down stairs; when he went up one was sitting up in the bed and he struck it with the stone, that he killed all he could catch, guessed some escaped; got down stairs.

He said he did not sleep very well at night; there had been seven (or more) Indians telling him they would take off his chains and release him—"talk all night!" At length he said to them why they didn't? and that he told them at last to go away; "that was the devil!" Asked if he saw the woman at night? he said not; any of the children? not any, he said, but the baby, which he said would stand in the corner and say to him "after while—after while—you come after while!" Gave no reason for killing the infant; said he would see a light at night—a fiery face; said nothing about having killed the infant, because it was a boy.

Cross examined.—Said he saw the light in prison; supposed he meant for some time after his imprisonment; said he slept well at the time of my last visit.

James Cunningham, *sworn.*—Was in a back room when prisoner got some salts at my store; heard of it; saw him there; he said he was sick.

Robert Cunningham was called, when the defence admitted prisoner had taken salts, as mentioned by several witnesses.

Defence called—

Miss Abigail Richards, *sworn.*—Saw him on Thursday before the murder, at our gate; he asked for tea and coffee; thought then I had given him his breakfast before, but hadn't; had no fire on, and told him I would give him none—that I had given him his breakfast before; told him to go to Slippy's; he asked for bread; gave him some; he thanked me and asked its worth? told him "nothing;" he said. "cheap price!" he hiccoughed very badly. Thought him drunk or crazy—looked as if he had been drunk and slept out.

Cross examined.—Thought him a drunkard from his dirty dress.

Both parties here rested.

The jury desired to ask a question of a physician: "Can a person recovering from *delirium tremens* recollect what has passed during it!"

Dr. VANHORN said he could, but the Judge considered the books the proper place for procuring the information.

Court adjourned.

FRIDAY AFTERNOON.

Court met, and Mr. McJunkin (for the prosecution) addressed the jury, followed by W. STEELE LANE, Esq., on the same side. When he had concluded, Mr. SMITH followed for the defence, going into a minute examination of the subject of partial insanity and of *delirium tremens*, on which grounds the defence rested; at a late hour in the afternoon the Court adjourned.

FRIDAY EVENING.

At half past six o'clock Court met and Mr. SMITH continued until after ten o'clock, citing Pritchard on Insanity, Eberle's Practice and other works on the subject. When he had concluded the Court adjourned.

SATURDAY, Dec. 16, 1843.

Court met, and Mr. FETTERMAN addressed the jury for the defence, at considerable length, taking the ground that even a *doubt* of the prisoner's sanity should secure his acquittal. At twelve o'clock he concluded and the Court adjourned.

SATURDAY AFTERNOON.

Court met, and Mr. SULLIVAN addressed the jury on the part of the prosecution, about three hours; after which the court charged the jury.

The Jury went out, and after an absence of two hours returned with a verdict of GUILTY OF MURDER IN THE FIRST DEGREE.

Prisoner's Counsel immediately moved for a new trial, and the Court postponed sentence until the adjourned Court in January, that the motion might then be argued.

CHARGE OF THE COURT.

GENTLEMEN OF THE JURY:—It has now become the duty of the Court to deliver their charge to you in this very important case. The prisoner at the bar, Samuel Mohawk, stands indicted for the crime of murder, for having feloniously, and with malice aforethought, murdered Margaret Wigton, in Slippery Rock township, in this county. On this indictment he has been arraigned, and has plead not guilty. Before proceeding to the delivery of the charge it may not be improper to observe to you, that this cause has produced an unusual degree of excitement amongst the citizens of this county, and to remind you that it is your duty, if any feelings such as exist out of doors, have found their way into the jury box, that you will divest yourselves of them. The solemn obligations which you as jurors have taken, "is well and truly to try, and true deliverance make, between the Commonwealth and the prisoner at the bar, whom you shall have in charge, and a true verdict give according to the evidence." With the feelings and opinions that may be entertained by the populace, you have nothing to do—they are not to enter into your consideration, you are to decide the cause, and render your verdict upon the evidence, and the law that arises upon it, without the slightest regard or consideration of public feeling. There is another subject on which it may not be improper in the court to make some observations. There are some who entertain scruples of conscience against returning a verdict of guilty in a case where the punishment is death. Where such scruples exist, the person having them ought not to serve as a juror in a case in which the punishment of the prisoner, if convicted, is death, as he would be placed in a situation in which he might have to disregard the testimony that he believed to be true, and disregard the law arising upon it, or be compelled to do violence to his conscientious scruples, thus placing himself in a dilemma either to do violence to his conscience, or in effect commit moral perjury. If any such scruples exist in the minds of any of the jurors, it is your duty, so far as practicable, to divest yourselves of them. The crime with which the prisoner stands charged, is one of the highest that can be committed against the laws of the State, and is punished with death. The act of 1794, passed for the amelioration of our penal code, divided murder into two degrees, murder of the first, and murder of the second degree. Murder of the first degree is punished with death, murder in the second degree by solitary confinement at labor in the penitentiary. The act of 1794 makes no alteration in the law as to the crime of murder, except to distinguish the degrees of crime, and apportion the punishment. The intention with which the act was done remains as before the passage of the law, the true criterion of the crime. It throws upon the Commonwealth the burthen of proof as to the murder being committed wilfully, deliberately, and with pre-meditation. In the present case it is unnecessary for the Court to take up your time by stating in detail what is necessary to be proved to constitute murder in the first degree, and murder in the second degree, as it is admitted by the counsel of the prisoner, that the homicide committed by him is murder in the first degree, unless the defence which they have set up—the insanity of the prisoner, at the time the homicide was committed, renders him not accountable for the act, and it is manifest that the killing of Mrs. Wigton and her five children, in the manner detailed by the witnesses, would be murder in the first degree, unless the evidence given in the cause is such as satisfies the jury that the prisoner was insane at the time he perpetrated the horrid act.

(The Court then detailed to the jury what they considered the substance of the evidence, as to where the prisoner was first seen on his way to Butler, his stay there, his leaving Butler in the stage, his being at the Stone House, his being seen at Kennedy's shortly after the commissions of the homicide, his arrest at Kiester's, and his being taken to the house of Wigton, and his confessions at Kiester's and Wigton's that he killed the family.)

The defence set up in this case, is that the prisoner at the bar was insane at the time he committed the horrid deed, for which he is now on trial, and it is contended by the prisoner's counsel, that the evidence shows he was laboring under partial insanity; either from some unknown cause, of which, under the circumstances in which they have been placed, (being assigned as counsel by the Court,) they have not been able to adduce any evidence of his being subject to before he was seen in this place, or that he was laboring under delirium tremens at the time

he committed the homicide, and therefore not responsible for the act done. The counsel of the prisoner have read a great number of cases to the jury, and commented on them with a great deal of ability, and have also read the opinions of medical writers from works that were considered as standard authorities by physicians. That description of insanity mentioned in Pritchard on Insanity, that cannot be discovered by any evidence from threats, or conduct of the person, nor from any apparent alienation of mind, but merely from the declarations of the person, of being impelled to commit homicide, would be very dangerous to the community, if received as a defence for the commission of homicide, as all that would be necessary for the wicked and depraved would be to state that they were laboring under impulse of this kind, before they committed the homicide, and afterward set up their own declarations as a defence.

It is true, gentlemen of the jury, that in all criminal cases, the jury in returning a general verdict, may decide both the law and the facts, and may disregard the law as laid down by the Court, and when this is done by the jury, and the verdict is an acquittal, no Court would disturb the verdict. It is otherwise when the jury, contrary to the law that should govern them in deciding the cause, return a verdict of guilty, then the Court would set the verdict aside by granting a new trial. Where the jury disregards the law that arises on the evidence, it is at the expense of their own consciences, and of the solemn obligation they have taken as jurors. It is safer, if not wiser, for the jury to be governed by the law as laid down by the Court, than to take the law either from the counsel for the prosecution, or the counsel for the defence. On the one side, in their zeal to discharge their duty to the public and cause the conviction of the accused, they may give a colouring to the principles of law, which they consider as arising on the evidence. On the other side, in their zeal and desire to ensure the acquittal of the prisoner, they may in their applications of the principles of law, which they consider as containing the defence, cause the jury to err. The duty of the Court is to lay down the law to the jury, as they believe it to be settled by our courts of justice, and as they believe it arises on the evidence given in the case. By the law that arises on the facts given in evidence, you, gentlemen of the jury, are, or ought to be governed, and if according to this, the accused is not guilty. no considerations will prevent you from the faithful discharge of your duty by returning a verdict of not guilty. If you on the evidence, and the law arising upon it, are satisfied that the prisoner at the bar is guilty, your verdict, without any regard to the consequences that it may produce. will be guilty. You are to hold the scales of justice with a firm and unwavering hand, and not permit feelings of any kind to incline the balance either to one side or the other.

I shall endeavor to state to you in as concise and plain a manner as I possibly can, what in the opinion of the Court, are the principles of law by which you ought to be governed, and which you should apply to the facts as you may find them. Any opinion which the Court may give on the facts, if they should give any, is in no wise binding on you, nor entitled to any consideration, unless in accordance with your own opinions. You are not bound by the recollection of the Court as to the evidence, nor by their notes of the testimony; you as it were, keep the word of the evidence on the tablet of your memory, and any thing that the Court has, or may say as to the evidence, will be to refresh your recollections, and to point out to you upon what the cause turns, and to assist you in finding your verdict.

Insanity, the defence set up in this case, "is such a proteus like disorder, and exists in such a variety of forms, that it is difficult," if not impracticable, to give a precise definition of it. The law as regards this unfortunate disease of the human mind, like the law in all its branches, aims at the utmost precision, but it is difficult to be precise when the defence is insanity —the general principle is clear, the operation of it attended with great difficulty. There is however sufficient criteria to discriminate crime from insanity, although there are cases in which they seem to be almost blended. Yet there is a partition that divides them, and it is by such well defined interposition that they are to be separated. Insanity must be established by the evidence—it is not eccentricity of character, indulgence in habitual gusts of passion, ungovernable impetuosity of temper, nor the phrenzy of intoxication, but the radical perversion of the intellect, sufficient to convince the jury that the party was bereft of reason, incapable of distinguishing between right and wrong, moral good and evil, when the act was done. It is the intention with which the act was done that gives character to the crime. It is not the hand that strikes the deadly and fatal blow, but the wicked and corrupt intention with which it has been done, that makes the act criminal. The offence of crime consists in the animus or intention of the perpetrator of it, and having at the time sufficient capacity to distinguish between right and wrong, a man under the influence of real madness, is considered by the law as possessing no will; he commits actions unconsciously and insensibly, and therefore is not accountable for them, in the same manner as a person possessed of his senses. When the accused sets up insanity as his defence, "it is incumbent on him to prove that the act with which he stands charged, was committed at a time when he was actually insane. "A person liable to partial insanity, which only relates to particular subjects or notions, upon which he acts and talks like a madman, yet if he is possessed of as much reason, or mind as enables him to distinguish between right and wrong, he will be answerable for the commission of crime." Judge Tracy, in the case of Ronold, instructed the jury that to exempt from punishment, or to entitle him to an acquittal, he must be totally deprived of his understanding and memory. This as I understand the law, is not to be taken literally but to apply to understanding and memory as to the particular act committed, or in other words that he did not know when the act was committed right from wrong.

Sir Matthew Hale, one of the most able of the English Judges, says "there is a partial insanity, and a total insanity, the former is either in respect to things *quoad hoc illud insanin*, some persons that have a competent use of reason in respect to some subjects, are yet under a particular dimentia, in respect to some particular subjects, or apparitions;

or else is partial in respect of degrees, and this is the condition of very many especially, melancholy persons, who for the most part, discover their defect in excessive fears and griefs, and yet are not wholly destitute of reason, and the partial insanity seems not to excuse them in the committing of any outrage in its matter capital." "It is very difficult to define the invisible line that divides perfect and partial insanity, it must rest upon circumstances duly to be weighed and considered by the judge and jury, lest on the one side there is a kind of inhumanity towards the defects of human nature; or on the other too great an indulgence given to great crimes." Insanity to take away responsibility for crime, in cases of atrocity, the relation between the diseases, and the act must be made apparent by the evidence.—The delusions, (as the law terms it) or the illusions, (as termed by medical writers) must be connected with the act, and must exist at the time the act was done, and if this is not established by the evidence, he is reponsible for the act, and the partial insanity will not exsuse the commission of the offence. Delusions, where there is not phrenzy, or raving madness, is the true characteristic of insanity, and where it cannot, or is not established by the evidence in a case where the accused is standing on his trial for his life and death, he ought not, and cannot, according to the principles of law, be acquitted,—Where delusion is established by the evidence to have existed in the mind of the accused, and that delusion is connected with the act done,—and existed at the time of doing the act, or can be reasonably inferred from the evidence to have existed at the time when the act was done, the accused would be proved to be insane, would not be accountable for the act, and would be entitled to an acquittal.

An act of Assembly was passed in 1836, which provides that, "In every case in which it shall be given in evidence upon the trial of any person charged with any crime or misdemeanor, that such person was insane at the commission of such offence, and such person shall be acquitted, the jury shall be required to find, specially, whether such person was insane at the time of the commission of the offence, and to declare whether such person was acquitted by them on the ground of such insanity, and if they shall so find and declare, the court before whom the trial was had, shall have power to order such person to be kept in strict custody, in such place, and in such manner as the court may see fit, at the expense of the county in which the trial was had, so long as such person shall continue to be of unsound mind."

It is contended that the Legislature in the passage of this law, could not have intended to change the humane principle of our criminal jurisprudence—that whenever there was a reasonable doubt arising on the evidence, the doubt should operate in favor of the accused—and that where insanity is set up as a defence, although the law throws the burthen of proof of insanity upon the accused, to excuse him from accountability, for the act done by him, yet if there is a doubt as to the sanity it is the duty of the jury to acquit and to find specially, in their verdict that the prisoner was insane at the time of the commission of the offence.

The act of Assembly was passed for humane purposes, to authorise the imprisonment of the insane, and not for the purpose of changing the principles of our criminal law. But before a jury could be required to find specially on their oaths that a person was insane "at the time of the commission o the offence," there should be such evidence as would satisfy them that he was insane at the time the offence was committed. However, this is a matter entirely for the consideration of the jury upon the evidence.

I have before stated to you that the defence is rested on two grounds—partial insanity existing from some cause, of which, owing to circumstances, they have not been able to adduce any evidence of his being heretofore subject to; and insanity arising from delirium tremens. With regard to the first branch of the defence, unless there was some evidence of its existence, or from which it could be inferred, it would not avail the accused. As to the second branch of the defence that he was laboring under delirium tremens; the case, unless there was evidence on the first branch of the defence, turns on it, and to part of the defence you will give your special and careful attention. (Here the court detailed the substance of Col. Brinker's evidence, as to the situation of the prisoner at the bar, when he first saw him in his yard, the administering of medicine to him—bleeding him, his saying that there were Indians after him, and talking to him at night—the manner in which he behaved while at his house, or in going to the stage office, the testimony of Mrs. Mitchel, Messrs. Thomas, Mason and Mechling, his declarations in the hearing of Mr. McNair, and Mr. Kreidler as to seeing devils, and his declarations in jail.)

I have before stated that the phrenzy of intoxication, will not excuse the commission of crime. But there is a manifest and plain distinction between the immediate and remote effects of drunkenness. "A man is not held guiltless, who perpetrates a crime during the state of intoxication, he voluntarily introduces into his system a stimulus which augments his ferocity, diminishes his moral affections, and overshadows his reason. But the usual effects of this stimulus is tempory, he awakens from his debauch rational, and commonly drags after him the heavy chain of reflection." But it is certainly true that intoxication may produce insanity, and terminate in mental derangement, and where it has produced *delirium tremens*, and the person laboring under its influence commits a fatal outrage, "no system of jurisprudence would connect the violence with the cause which originally produced the disease." *Delirium tremens* is partial insanity, the person laboring under the disease is generally laboring under delusion, which is the true criterion of insanity, and if the prisoner at the bar was laboring under *delirium tremens*, and the delusion was connected with the act which he done, and existed at the time he committed the horrid deed, he is not responsible for it, and would be entitled to an acquittal. Although you might be satisfied that he was laboring under *delirium tremens*, unless you are satisfied from the evidence that the delusion was connected with the act, and that it existed at the time of its commission, or can be reasonably inferred from the evidence, and that he did not know right from wrong when he committed the deed, the par-

tial insanity would not render him irresponsible for the act done. Your first inquiry will be was the prisoner at the bar laboring under *delirium tremens*, and in making this enquiry you will recollect the testimony of Col. Brinker, and the other witnesses, and also the opinions of Drs. Agnew, Graham, De Wolf Howard and Vanhorne, that from the symptoms detailed by the testimony that in their opinion the prisoner while at Mr. Brinker's was laboring under *delirium tremens*. Against this you will recollect the testimony of Dr. Agnew, that he visited him three times, while at Brinker's, prescribed for him, and that he did not discover any thing that induced him to believe he was laboring under *delirium tremens*—and against this you have his evidence that from the partial examination he made in his visits he might at the time be laboring under *delirium tremens* and not have discovered it. And the testimony of Dr. Graham, that he called at his shop for medicine, told him rationally what he was laboring under,—and was of sound mind when he was with him and appeared to have been drinking. Should you be satisfied from the evidence that he was laboring under *delirium tremens*, your next enquiry will be, what was the state of his mind when the homicide was committed? Human tribunals can only judge from the acts done, the circumstances attending it, the declarations of the accused, before and after the act, as given in evidence. The motives of the heart can only be truly known by the searcher of all hearts. A great deal has been said by the counsel in their arguments as to the prisoner being an Indian—and as to the traits of the Indian character—their warfare, revenge, and indiscriminate slaughter. The prisoner being a stranger here—his being an Indian—traits of the Indian character—their warfare, and revenge, is not to have any influence on your minds, further than the character may have a tendency to enable you to apply the evidence given as to his acts and declarations. He is to be tried by you on the evidence given by the witnesses, in the same manner as if he was one of our own citizen. He being an Indian is neither to make for him nor against him in your deliberations on the evidence. Was he laboring under delusion at the time he committed the homicide, and did he know right from wrong? The testimony of Mrs. Davis, as to his acknowledgement that Mrs. Wigton was near getting the better of him, and to other witnesses that she made a good fight. The evidence of Mr. Kennedy as to his looking back towards the house of Mr. Wigton every few rods, as he came up through the oats field. The manner in which he resisted, and kept at bay those that were endeavoring to arrest him at Kiester's—assigning as a reason for killing the family, that white folks were saucy. His resentment of the insult given him by John Baldwin, and his anger at William Crow, when he pulled the rope, and his threats of what he would do if they would untie him—his directions where they should shoot him—saying that he was sorry that he had killed them, and his declarations when the witnesses were examined before the inquest—assenting to some of the evidence, and dissenting from other parts of it—is evidence against him, as to his having a knowledge of right and wrong at the time he done the deed. His conduct at Sill's—his saying "he find him" "he find him," the testimony of Mr. McNair, and Mr Kriedler, of his saying that he saw devils, and of them telling him to kill. The leaving of his coat in the kitchen of the house in which the homicide was committed—his going off with Mr. Wigton's cloak on him, his declarations in the jail shortly after he was committed, as proved by Col. Brinker, Mr. Jack, Mr. Mechling, Mr. Little, and Mr. M'Glaughlin, are all in his favor, as to his laboring under delusion. On the other hand the testimony of Mr. Stewart, who visited the jail in company with the Rev. McGowan, the day after he was committed to prison, is against him, showing that he was conscious that the act he had done was wrong and that he deserved punishment for it. His declaration at Mr. Wigton's that he guessed he was crazy when he killed them has been urged as evidence in his favor—it did not strike my mind in that light. It is unusual for a person laboring under delusion to have a knowledge of it, and to assign as a reason for the commission of the act that he was crazy immediately after the perpetration of it. But of this as of all the facts, you, gentlemen of the jury, are the judges.

In all criminal cases, wherever there is a reasonable doubt of the guilt of the accused, arising on the evidence, the accused is entitled to the benefit of the doubt—but the doubt must be a reasonable one, not an ingenious or fancied doubt, but an honest difficulty arising upon the evidence, striking the mind and consciences of the Jury, and rendering them unable on the evidence to find that the defendant is guilty. I have thus in as concise and plain a manner as I could, brought the case before you—and I have no doubt you will render such a verdict, as will do justice to yourselves, justice to the solemn obligation you have taken, justice to the community and to the prisoner at the bar.

In answer to an enquiry of one of the jurors, whether they might reduce that verdict to writing—the Court observed they might reduce their verdict to writing, and state if it was a verdict of acquittal, that they should state on their verdict that the prisoner was insane at the time of the commission of the offence, and that they acquitted him on the ground of such insanity, and that if their verdict was guilty, they should state the degree of murder.

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